



Land Tenure and Property Policies in East Africa

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Edited Transcript – Peter Hetz

We are going to speak today about a series of USAID investments trying to get to the source, the foundation of conflicts and post-conflicts arising in Eastern Africa based upon a long-term USAID investment in that part of the African continent. Gregory and I started working together on these issues formally under contract. I represent the contractor; Gregory represents the United States Agency for International Development. And yet, we have shared a long, passionate interest in property rights regimes in Africa, and it's been a large part of our lives in the continent. Since coming back to the United States we've taken different career paths, however, our Land Tenure and Property Rights agenda is largely driven by a set of USAID investments that are helping the agency and other practitioners, donors, to better understand the links between land tenure property rights and some of the agency's goals and how they operate within its foreign assistance framework. Towards that end, a series of tools have been developed in support of a land tenure and property rights framework that have been supported by the agency, and it is not our intent to delve into those. It's those tools and the foundation of USAID's investments that allow us to speak today about specific instances where access and use issues to resources in Africa, primarily land, are often times the triggers for violence and often times the result of tenure insecurity.

The title of our presentation today is a bit unusual, and you'll hear about it in the context of the presentation, but we'd like to highlight perhaps the significant drama and heightened emotional content of what property rights for people in Northern Uganda, Kenya now, and Southern Sudan mean, what these property rights mean to them. So the title of our presentation today is "Running with Spears By Their Bellies: Land, Property Rights, Tenure, and Security and Violence in Eastern Africa."

On behalf of the Tetra Tech ARD group and on behalf of USAID, and Greg has asked me to say thank you specifically to the Woodrow Wilson Center, to our colleagues and friends, many of whom we've worked with over these past years, for this opportunity to speak.



environmental change & security program



So, without any further ado, let me start by addressing the major issues of our presentation. We submit that insecure land tenure and property rights and the inequitable access to land and natural assets are two of the leading triggers of violent conflict, population displacement, the over-exploitation of natural resources, and political instability throughout Eastern Africa. Conflict over the control of land and natural resources is increasingly due in large part to the global competitive demand for Africa's resources and due to the increased value of these assets. As the value in natural assets and their market interests grow, competition will increase and the absence of transparent, strong, and defensible property rights will erupt in violent competition for the control over these resources, and this will continue or expand further. Climate change, international food and security, and global hunger for fuel alternatives from renewable resources will accelerate and augment this crisis. The failure of governments to integrate customary tenure into formal frameworks in such a way that customary rights holders can benefit from economic incentives while retaining security of assets and equitable benefits sharing is contributing to the conflict that we witness in this part of the continent. We submit that women and children are amongst the most affected by tenure insecurity and the struggle between formal and informal laws. There's an imbalance between the efforts to achieve an asset security through either formal or informal systems in this context. This is resulting in some highly perverse outcomes, such as an increase in HIV/AIDS infections among women, children, and increasingly, large populations of unemployed and unengaged youth, making them susceptible targets to conflict brokers. Development assistance programs can actually increase tenure insecurity, from misplacing the location of bore holes, schools, and markets, to large-scale agricultural investments, to titling land in locations where rights overlap and are contested.

There is a direct correlation between the length of time people have been displaced from their traditional lands and the possibility for land disputes and claims to result in violent conflict as they return home. With the loss of institutional memory, direct ties to land and resource stewardship, and the breakdown of traditional disputes mechanisms, fights over resource access and use, particularly land, can be explosive. Ethnicity, clan relationships, and religion only accelerate this process.

Let me establish sort of a common framework, a common denominator for us. When we talk about property rights we view them in the conventional property rights regime of a bundle of rights, and those we characterize as four primary regimes: use rights, management and the ability to transform the resource, the ability to transfer, transfer rights, and the ability to own. Those are the cornerstones of the rights that we're talking about. The relevant regimes that





get kicked around with regard to those four cornerstones are oftentimes referred to as private, common or public, then there are issues of open access, and then there is inevitably the struggle between what's called common property versus open access and what many people I've encountered, regularly disregard: the possibility for overlapping regimes of rights occurring simultaneously and over time.

We're particularly interested today in the essence of what we call customary rights. To put those into perspective, I think the most singular contributing factor to my professional interest in this was in joining the Kenyan government in 1976, '77, after the establishment of a reserve in Northern Kenya that was ostensibly dedicated solely to conservation but while retaining the use rights of local people towards resources within that reserve. This is now known as the Losai National Reserve. It was there that it struck me what was meant by overlapping rights, because not only did we have to negotiate for rights around ethnic groups who use this area traditionally but between patrilineal and matrilineal organizations around these rights, and then the next set up being clan rights within the context of these ethnic groups. You could further distinguish these rights between men and women. Men may have access to one resource, and women may have access to another, and the brokering of those rights, access, and use issues was often tied to matrilineal and patrilineal systems. What struck me more was, how do you figure a management plan can accommodate the huge seasonal variety in resource access and use? So take the ethnic, take the seasonal, and then take the gender-based interpretation of rights. And I thought I had it nailed as we started to discuss opportunities for negotiating property rights as part of the management that wouldn't support this system, only to learn that many folks living in marginal areas had, in addition to these contemporary rights, had generational rights to consider. And when we look at overlapping rights, I'm talking about rights through inheritance that can be realized generations later, an IOU that is kept in the pocket and used during times of stress, during times of violence, and during times of displacement. I believe that those four elements of a customary rights regime have got to be appreciated in the context of today's discussions.

I am now going to ask Gregory to speak to two specific examples. He's just returned from a gig on the road for USAID, I think 92 days in the saddle, and he'll be speaking specifically about observations and experiences in Kenya and Southern Sudan.

[Break for Peter Hetz presentation]





Thank you, Gregory. Three case studies, most of these revolving around land that hosts opportunities for subsurface property rights, minerals, and surface rights as well as water rights, fishing rights, et cetera. It's ironic, but we know about rights being manipulated or lost in large part around civil war where people perpetuate violence, maintain conflict because it gives an elite group of people access to resources that they can turn around and use in support of that armed struggle. That is reflected perhaps at one end of the spectrum most notably, within the realm of conflict diamonds, but it's been related to issues of timber, related to issues of oil, which are vitally affecting the U.S. economy presently in Southern Nigeria, and are related to other mineral extractions where an international market will force people into more desperate and immediate ways of extracting those, casting aside anything that resembles statutory, let alone customary, property rights.

The irony of the Northern Uganda situation is that after decades of being displaced in the face of a conflict that is largely based upon ethnic lines, displacement of more than two million people offered a major part of Northern Uganda an opportunity around natural resource rights. And by those, I mean because people who are forced into camps and maintained in camps in some instances in excess of 20 years there has been significant regeneration of woody biomass in Northern Uganda representing an opportunity for sustainable natural resources management as well as biodiversity conservation.

My talk on Northern Uganda will try and emphasize what lessons we are learning from Northern Uganda and how these relate to our property rights regimes. Now, in all of these instances I don't mean to blithely cast this great blanket over geographical areas and call everybody the same, and I want to nuance the fact that Northern Uganda is a complex grouping of ethnic groups and has historically been transient. The most recent establishment of ethnic groups in the north that have been affected by the war are largely characterized as people called the Acholi, the Lango, and the Teso. Each group has been displaced for various periods of time from their original homesteads. These three major ethnic groups form major ethnic-based regions in the north, and each have been affected by the fight between the Ugandan People's Defense Forces and the Lord's Resistance Army in some instances for more than 20 years; that's a generation. As of March 2008, only nine percent of the Acholi people have returned home back to their homesteads. More than 32 percent are in transit camps, halfway homes, over which they have no legitimate rights, and the rest remain in original IDP camps, some 59 percent, and it's about these people that I will be speaking today.





Despite the numerous lessons that we've learned from post-conflict resettlement and property rights in Africa, the National Policy for Peace, Recovery, and Development for Northern Uganda, published by the Ugandan government, still demonstrates a fundamental disregard for the importance and urgency associated with land tenure and property rights. It is barely addressed. So a major policy guideline and donor investment document still fundamentally disregards these basic rights. This is nowhere more apparent than in Northern Uganda, and particularly in the Acholi sub-region, where historical differences between the forces of the President, who took over power in the middle '80s, and the north, who are traditionally aligned with the people who were thrown out of power, remain vital in terms of conflict.

With the prospects for peace always 'months away', 'months away', there is an opportunity for us to position a proactive strategy that helps resettlement on the land and an opportunity to nurture a regional program of secure, enforceable property rights. But I am concerned this door of opportunity will close in the melee of the rush to return home, for people to occupy land, and to acquire or reacquire traditional rights, access and use rights, to resources. The results of missing this opportunity could be a painful and protracted period of failed and inequitable agricultural development, resource allocation and benefit sharing, and could be the source of significant and, I have to say, continued corruption. It will fuel cross-border disputes, it will support huge unemployment, crime, and continued regional instability.

The political leadership amongst the Acholi remains widely divided between customary and statutory lines -- many of you know that Uganda has developed a sophisticated program of decentralization and district-focused development -- running in parallel with a strong Acholi tradition of customary governance. After 20 years of armed conflict traditional community clan-based systems, social welfare, and dispute resolution mechanisms have deteriorated after 20 years living away from your power-base, your land. This leaves a dramatic and disturbing power vacuum amongst the Acholi people that is rapidly being filled by political and civil government authorities, including the armed forces. The potential for disputes and conflict between these power structures is more poignant than ever. The most determined and resounding call amongst the Acholi remains the desire to return home. Whatever you say, I just want to go home. Any discussion or programming on land that delays this move will be regarded with suspicion and distrust. And indeed, the go slow approach, let us get out in front, and let us work with you in order to determine who has what rights and actually begin to look at mapping or looking at a rights registration, all of that; if that delays me going home once that peace accord is signed stay out of my way.





And while discussion concerning the environment and the opportunities to capitalize on the environment and sustainable natural resources are considered important by all Acholi people, folks do not commit environmental suicide intentionally, believe me. The most significant priorities still remain: I need to get back home, I need to get access to my land, I need to build a house, and I need your assistance to start up with agriculture. You can talk to me about elephant migration corridors, you can talk to me about alternative fuel wood, you can talk to me about biomass production, that's all very well and good – let me get home.

Greg and I had an opportunity to speak with a wide variety of people in political camp situations and amongst the Acholi leadership in March of 2007. More than 1,000 people were surveyed, and they acknowledged that there would be disputes and conflicts over land. It's not unnatural to expect that. Most people considered this to be an inevitable product of displacement and correlated the number and intensity of land disputes to the amount of time they'd spent in camps. The longer I'd spent in camps the harder it's going to be to get home. Hence, certain districts of the Acholi group could be expected to suffer more land disputes than others who had been displaced for shorter periods of time. In this gathering of political and customary leadership elites they were able to characterize potential land disputes very sophisticatedly at different levels. They would deal with property rights disputes around household and intra-clan disputes. Hardly surprising; we do it every day if you've ever had a fight with your neighbor over a fence line. There will be land disputes based on inter-ethnic clashes over lands and natural resources, the Acholi and other groups around them -- some of you may know of a very significant armed pastoralist group in the northeast of Uganda called the Karamojong who periodically raid the Acholi -- and then there will be land disputes with government of Uganda over land whose titles or leases are unclear and/or problematic. And the fifth one is that there will definitely be disputes over property rights related to natural resources and public lands. Hardly surprising. We don't want to go back and find that the forest reserve and the park and the game reserve and the government ranches are still in-tact and we'll still be excluded. We want to take this opportunity to redefine our access and use rights to public lands.

The legal and regulatory framework guiding the resettlement and land rights have yet to be interpreted successfully within the customary system there. It's patrilineal, patrilocal, which means the guys are in control, and the gals move to the guy's family, and they basically become property thereof, many of the women. And while the constitution and new land law make provisions for customary certification of land, a very proactive approach taken by the Ugandan government and its land policy and land legislation, to date there's no experience





with how you grapple with customary land rights registration, customary land tenure systems. Customary law and customary land tenure systems have yet to be successfully integrated into the land policy and land law. The absence of guidelines and experience in this respect leaves the land law open to a variety of interpretations, which are being capitalized on, and they continue to lead to confusion. This confusion is beginning to fuel unnecessary conflicts and disputes. Well-intentioned efforts to support customary land certification in the north could, without the proper measures, the proper engagement, fuel conflicts between clans and between clans and civil authorities. And hence, they will run with spears by their bellies. One paramount chief in the Acholi system stood up at the workshop and said, “If anybody messes with my clan land claims I can mobilize 700 warriors, and they will, in the Acholi tradition, run with spears and shields, spears by their bellies,” meaning that phalanx approach of 700 armed warriors coming down the path and taking on anybody who dared to contest their clan-based claims.

Right now land redistribution is not so much an issue, as there appears to be plentiful land. If anybody has ever traveled up to Northern Uganda it’s the classic, you know, I meant the old colonial adage was miles and miles of bloody Africa. Nonsense; it looks like wide open “unused land”, but there is no such thing in Africa. There are claims and property rights that have been registered with people for thousands of years, and those claims are very, very much vital, and there are people who are interested in manipulating those claims, both contemporarily as well as historically. The plentiful land looks like it’s plentiful, but the Acholi population, for example, has increased by at least 100 percent over the last 20 years. So you’ll have a doubling of the population and an entire generation which has had no significant links to those lands. While it has been publicly stated that everyone can return to the area from which they were displaced, it’s still unclear if legitimate claims to land and the resources on them can be accommodated within the traditional clan land allocation and tenure system. And the ability or the inability and failure to redistribute land in the face of growing population needs could present an additional set of conflicts.

This is further complicated by the number of people who have the potential to be disenfranchised in this post-conflict land access and distribution issue. Vulnerable groups, in particular after armed conflict, include female headed households, no longer having households defined by men, widows, child mothers, HIV/AIDS victims, children in large part who have been abducted and grown up away from home, people who are returning from outside of the country, and illegitimate children. How significant is that? Well, in the northern parts of Uganda, particularly in the Acholi area, it’s significant.





For women in these groups, customary law protects them but only up to a point. The Acholi are both, as I said earlier, patrilineal and patrilocal. Thus, when daughters marry they move to the husband's home and become part of his clan. Land is passed down to males only. Thus, neither widows nor daughters have ownership rights to land, only use rights, under customary law.

Many women have children but no husband and then do not have the customary rights to any land because they have left their clan and they have not been taken in by the clan of the father of their children, either because they never got married or they can't recognize who the father is. And as well, many children cannot trace their father and therefore have no customary rights to land. So you have a huge population of kids who can't legitimately go forth and make any legitimate land claims in a customary system.

In addition, it's thought between 10 and 15 percent of the population of the north is disabled because of the war. Disabilities include those that have occurred because of the war, land mines, increased prevalence of diseases and mental illness, and those that would otherwise exist. Physical disabilities make it difficult or impossible to farm, to get water for fuel, and to be otherwise mobile. While in the camps, many of the needs of the displaced and disabled have been taken care of by humanitarian assistance; upon return to rural areas, however these services will not be available. Many disabled people will not be able to farm their land as an asset, nor will they be able to lease it out or sell it, which would provide them with the means to earn a living in another way.

Just when you thought it was getting bad, it gets worse. Fifty percent of the populations in the camps are believed to be infected with HIV/AIDS. AIDS is still stigmatized and many of those infected are unwilling to tell their partners for fear of being abandoned, increasing the likelihood that the infection will spread. The IDP camps are relatively closer to town centers and near medical facilities. When IDPs return home there will be very limited medical facilities. Those who are ill and unable to work are unlikely to receive land in the initial distribution. Those who are women or orphans are even less likely to receive land given the discussions mentioned earlier.

Land is a critical asset for those with HIV-AIDS because land and housing and other property constitute a resource base upon which the household can draw to cover HIV/AIDS related costs, including the costs of medical treatment, the provision of care, and services





related to deaths and funerals. Land may also, and natural resources may also, provide the means of sustaining livelihoods even when the income earned is through the leasing out of land. Profits from the sale of assets can help offset losses that result when household caregivers, often women and girls, are diverted from other income-generating activities.

One of the biggest needs expressed by people in the north was the importance of public information and awareness around resettlement, campaigns focused on knowing your rights and responsibilities with regards to land, resource management opportunities, resource access, and use. They didn't need to be told that by outsiders, it was a clearly expressed need. They believed that this effort could make a most beneficial input into the dialogue on land issues and resource issues in the north. And in its absence people will suffer from continued efforts of regular information manipulation and disinformation campaigns.

Greg and I both witnessed a large tract of land that has been manipulated by elites associated with the Ugandan peoples' defense forces in a critical area for natural resources management and biodiversity conservation opening up tracts of land for agricultural purposes. That's tolerated because people stay in camps and don't know what's happening. It's supported because the revenue that's generated from that is lining peoples' pockets. A truckload of cassava goes for between four and eight times the market rate in Uganda and Southern Sudan. A bag of charcoal in Northern Uganda is eight times its price in Uganda and Southern Sudan. There are market incentives to do everything wrong in looking at tenure and property rights, land use, and sustainable natural resources management. Northern Uganda faces a significant challenge, not only in its own internal recognition of tenure and property rights, but in looking at how those get secured in the context of significant regional market demand where people have a ready need and are willing to buy those resources.

